

222.7301

(ii) Are entered into or modified on or after November 18, 1997.

222.7301 Prohibition on use of non-immigrant aliens.

(a) Any alien who is issued a visa or otherwise provided nonimmigrant status under Section 101(a)(15)(H)(ii) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(H)(ii)) is prohibited from performing work under a contract for—

(1) A military construction project on Guam; or

(2) Base operations support on Guam.

(b) Lawfully admitted citizens of the freely associated states of the Republic of the Marshall Islands, the Federated States of Micronesia, or the Republic of Palau are not subject to the prohibition in paragraph (a) of this section.

222.7302 Exception.

The prohibition in 222.7301(a)(1) does not apply to a military construction project if—

(a) There is no acceptable offer in response to a solicitation for the project;

(b) The Secretary concerned makes a determination that the prohibition is a significant deterrent to obtaining offers on the project; and

(c) Another solicitation is issued for the project.

222.7303 Contract clause.

Use the clause at 252.222-7005, Prohibition on Use of Nonimmigrant Aliens-Guam, in solicitations and contracts subject to this subpart, except those issued in accordance with 222.7302.

PART 223—ENVIRONMENT, CONSERVATION, OCCUPATIONAL SAFETY, AND DRUG-FREE WORK-PLACE

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AUTHORITY: 41 U.S.C. 421 and 48 CFR chapter I.

SOURCE: 56 FR 36365, July 31, 1991, unless otherwise noted.

Subpart 223.3—Hazardous Material Identification and Material Safety Data

223.300 Scope of subpart.

DoD procedures for use in acquisitions involving ammunition and explosives are in 223.370.

223.302 General.

(b) Successful offerors are also required to submit hazard warning labels under the clause at 252.223-7001, Hazard Warning Labels.

(e) The contracting officer shall also provide hazard warning labels received from apparent successful offerors to the cognizant safety officer or other designated official in order to facilitate—

(i) Inclusion of relevant data in the department/agency's material safety

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data sheet information system or label information system; and

(ii) Other control, safety, or information purposes.

[56 FR 67215, Dec. 30, 1991]

223.303 Contract clause.

Use the clause at 252.223-7001, Hazard Warning Labels, in solicitations and contracts which require submission of hazardous material data sheets (see FAR 23.302(c)).

[56 FR 67215, Dec. 30, 1991]

223.370 Safety precautions for ammunition and explosives.

223.370-1 Scope.

(a) This section applies to all acquisitions involving the use of ammunition and explosives, including acquisitions for—

- (1) Development;
- (2) Testing;
- (3) Research;
- (4) Manufacturing;
- (5) Handling or loading;
- (6) Assembling;
- (7) Packaging;
- (8) Storage;
- (9) Transportation;
- (10) Renovation;
- (11) Demilitarization;
- (12) Modification;
- (13) Repair;
- (14) Disposal;
- (15) Inspection; or

(16) Any other use, including acquisitions requiring the use or the incorporation of materials listed in paragraph (b) of this subsection for initiation, propulsion, or detonation as an integral or component part of an explosive, an ammunition, or explosive end item or weapon system.

(b) This section does not apply to acquisitions solely for—

- (1) Inert components containing no explosives, propellants, or pyrotechnics;
- (2) Flammable liquids;
- (3) Acids;
- (4) Oxidizers;
- (5) Powdered metals; or
- (6) Other materials having fire or explosive characteristics.

223.370-2 Definition.

Ammunition and explosives, as used in this section, is defined in the clause at 252.223-7002, Safety Precautions for Ammunition and Explosives.

223.370-3 Policy.

(a) DoD policy is to ensure that its contractors take reasonable precautions in handling ammunition and explosives so as to minimize the potential for mishaps that could—

- (1) Interrupt DoD operations;
 - (2) Delay project or product completion dates;
 - (3) Adversely impact DoD mission readiness, production base, or production capabilities;
 - (4) Damage or destroy DoD property;
- or
- (5) Cause injury to DoD personnel.

(b) This policy is implemented by DoD Manual 4145.26-M, DoD Contractors' Safety Manual for Ammunition and Explosives, which is incorporated into contracts under which ammunition and explosives are handled. The manual contains mandatory safety requirements for contractors. When work is to be performed on a Government-owned installation, the contracting officer may use the ammunition and explosives regulation of the DoD component or installation as a substitute for, or supplement to, DoD Manual 4145.26-M, as long as the contract cites these regulations.

223.370-4 Procedures.

(a) *Preaward phase*—(1) *Waiver of the mandatory requirements*. (i) Before either omitting the clause at 252.223-7002, Safety Precautions for Ammunition and Explosives, from solicitations and contracts or waiving the mandatory requirements of the manual, obtain approval of—

(A) The safety personnel responsible for ammunition and explosives safety; and

(B) The head of the contracting activity.

(ii) If the contracting officer decides to waive the mandatory requirements before award, the contracting officer shall set forth in the solicitation, or in an amendment of the solicitation, the specific requirements to be waived.

(iii) If the head of the contracting activity declines to approve a request for waiver, but the prospective contractor agrees to take corrective action to bring the operation into compliance, make the corrective action a part of the resulting contract.

(2) *Transportation considerations*—If shipment of ammunition and explosives is involved in the contract, address in the schedule of the contract the applicable Department of Transportation or Military Traffic Management Command requirements and any other requirements for transportation, packaging, marking, and labeling.

(3) *Disposition of excess*—Include instructions within the contract concerning final disposition of excess Government furnished material containing ammunition and explosives, including defective or rejected supplies.

(4) *Preaward survey*—Before awarding any contract, including purchase orders, involving ammunition and explosives, obtain a preaward ammunition and explosives safety survey. If the prospective contractor proposes subcontracting any ammunitions or explosive work, include a review of the subcontractor's facility in the preaward survey.

(b) *Postaward phase*—(1) *Contract administration office responsibility*. (i) The contract administration office is responsible for verifying that the safety requirements of the clause at 252.223-7002, Safety Precautions for Ammunition and Explosives, are being implemented in a manner that will reduce, to the maximum extent practicable, or eliminate the probability of a mishap occurring.

(ii) The clause at 252.223-7002, Safety Precautions for Ammunition and Explosives, requires the contractor to submit to the administrative contracting officer (ACO) any postaward requests for a waiver of the contract safety standards, a site plan modification, or a construction review. The ACO shall review any request and make recommendations to the contracting officer. The contracting officer shall make a decision after considering recommendations of the ACO and safety personnel responsible for ammunition and explosive safety.

(A) If the request arrives at the contracting office without evidence that the ACO has seen it, immediately send it to the ACO for review and recommendations.

(B) When the contracting officer has made a determination approving or disapproving the contractor's request, send the determination to the ACO for transmission to the contractor.

(2) *Subcontracts*—(i) The clause at 252.223-7002, Safety Precautions for Ammunition and Explosives, requires the contractor to notify the contracting officer when placing a subcontract for ammunition and explosives. The contracting officer should coordinate with the safety personnel and request supporting contract administration in accordance with FAR 42.202(e). If the contracting officer believes the nature of the subcontract work poses a potential danger to Government property, Government personnel, production capability, or contract completion, request supporting contract administration.

(ii) If the preaward safety survey identified areas in which a subcontractor was not complying with the manual, and the subcontractor was supposed to correct the deficiencies before start-up, the contracting officer shall require a preoperations survey to verify that the corrections were made.

(iii) When postaward safety reviews by the Government uncover any safety deficiencies in the subcontractor's operation, the review team shall inform the ACO cognizant of the subcontractor, who shall immediately notify the ACO cognizant of the prime contractor. The ACO cognizant of the prime shall inform the prime contractor of deficiencies requiring correction. The notifications shall be made by the most expeditious means appropriate to the circumstance. If a critical safety deficiency poses an imminent danger, the ACO cognizant of the prime shall make the notifications by the most expeditious means available.

[56 FR 36365, July 31, 1991, as amended at 59 FR 27671, May 27, 1994; 64 FR 51076, Sept. 21, 1999]

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223.370-5 Contract clauses.

Use the clauses at 252.223-7002, Safety Precautions for Ammunition and Explosives, and 252.223-7003, Change in Place of Performance—Ammunition and Explosives, in all solicitations and contracts for acquisition to which this section applies.

Subpart 223.4—Use of Recovered Materials

223.405 Procedures.

(d) Departments and agencies must centrally collect information submitted in accordance with the clause at FAR 52.223-9 for reporting to the Office of the Deputy Under Secretary of Defense (Environmental Security).

[66 FR 49864, Oct. 1, 2001]

Subpart 223.5—Drug-Free Workplace

SOURCE: 57 FR 32737, July 23, 1992, unless otherwise noted.

223.570 Drug-free work force.

223.570-1 Definitions.

Employee in a sensitive position and illegal drugs, as used in this section, are defined in the clause at 252.223-7004, Drug-Free Work Force.

223.570-2 Policy.

DoD policy is to ensure that its contractors maintain a program for achieving a drug-free work force.

223.570-3 General.

(a) The use of illegal drugs is inconsistent with the law-abiding behavior expected of all citizens. Employees who use illegal drugs tend to be less productive, less reliable, and prone to greater absenteeism. The use of illegal drugs by contractor employees results in the potential for increased cost, delay, and risk in the performance of a Government contract.

(b) If a contractor's employees use illegal drugs at any time, it can—

(1) Impair their ability to perform tasks that are critical to proper contract performance;

(2) Increase the potential for accidents and for failures that can pose a serious threat to the national security, health, and safety;

(3) Cause less than the complete reliability, stability, and good judgment required of an individual who has access to sensitive information;

(4) Create the possibility of coercion, influence, and irresponsible action under pressure that may post a serious risk to national security, health, and safety.

223.570-4 Contract clause.

(a) Use the clause at 252.223-7004, Drug-Free Work Force, in all solicitations and contracts—

(1) That involve access to classified information; or

(2) When the contracting officer determines that the clause is necessary for reasons of national security or for the purpose of protecting the health or safety of those using or affected by the product of, or performance of, the contract.

(b) Do not use the clause in solicitations and contracts—

(1) For commercial items;

(2) When performance or partial performance will be outside the United States, its territories, and possessions, unless the contracting officer determines such inclusion to be in the best interest of the Government; or

(3) When the value of the acquisition is at or below the simplified acquisition threshold.

[57 FR 32737, July 23, 1992, as amended at 64 FR 2598, Jan. 15, 1999]

Subpart 223.8—Ozone-Depleting Substances

223.803 Policy.

Section 211.271, Elimination of use of class I ozone-depleting substances, places restrictions on award or modification of DoD contracts requiring the use of class I ozone-depleting substances. These restrictions are in addition to any imposed by the Clean Air Act and apply after June 1, 1993, to all DoD contracts, regardless of place of performance.

[61 FR 50452, Sept. 26, 1996]

Subpart 223.70 [Reserved]**Subpart 223.71—Storage and Disposal of Toxic and Hazardous Materials**

SOURCE: 58 FR 28466, May 13, 1993, unless otherwise noted.

223.7100 Policy.

10 U.S.C. 2692 prohibits storage or disposal of non-DoD-owned toxic or hazardous materials on DoD installations, except as provided in 223.7102. DoD Instruction 4715.6, Environmental Compliance, implements 10 U.S.C. 2692.

[58 FR 28466, May 13, 1993, as amended at 67 FR 61516, Oct. 1, 2002]

223.7101 Procedures.

(a) If the contracting officer is uncertain as to whether particular activities are prohibited or fall under one of the exceptions in 223.7102, the contracting officer should seek advice from the cognizant office of counsel.

(b) When storage, treatment, or disposal of non-DoD-owned toxic or hazardous materials is authorized in accordance with this subpart, the contract or authorization should specify the types, conditions, and quantities of toxic or hazardous materials that may be temporarily stored, treated, or disposed of in connection with the contract or as a result of the authorized commercial use of a DoD industrial-type facility.

[60 FR 61597, Nov. 30, 1995]

223.7102 Exceptions.

(a) The prohibition of 10 U.S.C. 2692 does not apply to—

(1) The storage of strategic and critical materials in the National Defense Stockpile under an agreement for such storage with the Administrator of General Services Administration;

(2) The temporary storage or disposal of explosives in order to protect the public or to assist agencies responsible for Federal law enforcement in storing or disposing of explosives when no alternative solution is available, if such storage or disposal is made in accordance with an agreement between the

Secretary of Defense and the head of the Federal agency concerned;

(3) The temporary storage or disposal of explosives in order to provide emergency lifesaving assistance to civil authorities;

(4) The disposal of excess explosives produced under a DoD contract, if the head of the military department concerned determines, in each case, that an alternative feasible means of disposal is not available to the contractor, taking into consideration public safety, available resources of the contractor, and national defense production requirements;

(5) The temporary storage of nuclear materials or nonnuclear classified materials in accordance with an agreement with the Secretary of Energy;

(6) The storage of materials that constitute military resources intended to be used during peacetime civil emergencies in accordance with applicable DoD regulations;

(7) The temporary storage of materials of other Federal agencies in order to provide assistance and refuge for commercial carriers of such material during a transportation emergency;

(8) The storage of any material that is not owned by DoD, if the Secretary of the military department concerned determines that the material is required or generated by a private person in connection with the authorized and compatible use by that person of an industrial-type DoD facility; or

(9) The treatment and disposal of any non-DoD-owned material if the Secretary of the military department concerned—

(i) Determines that the material is required or generated by a private person in connection with the authorized and compatible commercial use by that person of an industrial-type facility of that military department; and

(ii) Enters into a contract with that person that—

(A) Is consistent with the best interest of national defense and environmental security; and

(B) Provides for that person's continued financial and environmental responsibility and liability with regard to the material.

(b) The Secretary of Defense, where DoD Instruction 4715.6 applies, may

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grant exceptions to the prohibition of 10 U.S.C. 2692 when essential to protect the health and safety of the public from imminent danger.

[58 FR 28466, May 13, 1993, as amended at 60 FR 13076, Mar. 10, 1995; 60 FR 61597, Nov. 30, 1995; 67 FR 61516, Oct. 1, 2002]

223.7103 Contract clause.

(a) Use the clause at 252.223-7006, Prohibition on Storage and Disposal of Toxic and Hazardous Materials, in all solicitations and contracts which require, may require, or permit contractor performance on a DoD installation.

(b) Use the clause at 252.223-7006 with its Alternate I, when the Secretary of the military department issues a determination under the exception at 223.7102(a)(9).

[60 FR 13076, Mar. 10, 1995]

Subpart 223.72—Safeguarding Sensitive Conventional Arms, Ammunition, and Explosives

SOURCE: 61 FR 7743, Feb. 29, 1996, unless otherwise noted.

223.7200 Definition.

“Arms, ammunition, and explosives (AA&E),” as used in this subpart, means those items within the scope (chapter 1, paragraph B) of DoD 5100.76-M, Physical Security of Sensitive Conventional Arms, Ammunition, and Explosives.

223.7201 Policy.

(a) The requirements of DoD 5100.76-M, Physical Security of Sensitive Conventional Arms, Ammunition, and Explosives, shall be applied to contracts when—

(1) AA&E will be provided to the contractor or subcontractor as Government-furnished property; or

(2) The principal development, production, manufacture, or purchase of AA&E is for DoD use.

(b) The requirements of DoD 5100.76-M need not be applied to contracts when—

(1) The AA&E to be acquired under the contract is a commercial item within the meaning of FAR 2.101; or

(2) The contract will be performed in a Government-owned contractor-operated ammunition production facility. However, if subcontracts issued under such a contract will meet the criteria of paragraph (a) of this section, the requirements of DoD 5100.76-M shall apply.

223.7202 Preaward responsibilities.

When an acquisition involves AA&E, technical or requirements personnel shall specify in the purchase request—

(a) That AA&E is involved; and

(b) Which physical security requirements of DoD 5100.76-M apply.

223.7203 Contract clause.

Use the clause at 252.223-7007, Safeguarding Sensitive Conventional Arms, Ammunition, and Explosives, in all solicitations and contracts to which DoD 5100.76-M applies, in accordance with the policy at 223.7201. Complete paragraph (b) of the clause based on information provided by cognizant technical or requirements personnel.

[61 FR 7743, Feb. 29, 1996; 61 FR 18195, Apr. 24, 1996]

PART 224—PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION

Subpart 224.1—Protection of Individual Privacy

Sec.
224.102 General.
224.103 Procedures.

Subpart 224.2—Freedom of Information Act

224.203 Policy.

AUTHORITY: 41 U.S.C. 421 and 48 CFR chapter 1.

SOURCE: 56 FR 36367, July 31, 1991, unless otherwise noted.

Subpart 224.1—Protection of Individual Privacy

224.102 General.

The Act does not apply to—

(1) Systems of records the contractor maintains on its employees; or

(2) The records generated by a State or private educational organization under a contract with the Government